



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Ms. Caroline Kelley
City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2010-14228

Dear Ms. Kelley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 397415.

The Missouri City Police Department (the "department") received a request for a video from a specified officer's in-car camera. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish that litigation is reasonably anticipated. *See* ORD 638 at 4 (1996). If that representation is not made, the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *Id.*

It appears from the information you have submitted that the requestor is an attorney who represents an individual involved in a collision with a department officer. You have also submitted a letter to the Missouri City Purchasing and Risk Manager from the requestor's client, dated prior to the request for information, that you state is "sufficiently similar" to the notice requirement of the TTCA. However, you do not affirmatively represent to this office that the letter is in compliance with the TTCA. We also note the letter does not state any damage or injury claimed by the individual. *See* Civ. Prac. & Rem. Code § 101.101(a)(1). You do not state the requestor or his client have made a specific threat to sue or otherwise taken any concrete steps toward litigation. Therefore, based on our review of your arguments and the submitted information, we conclude the department has not met its burden of establishing litigation was reasonably anticipated on the date the department received the request. Accordingly, the department may not withhold the video from disclosure under section 552.103 of the Government Code.

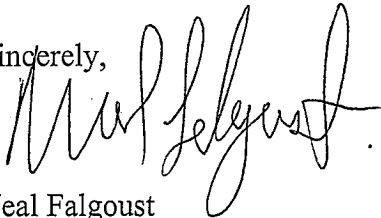
Next, we address your claim under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). You state the submitted video recording contains blurred images of multiple license plate numbers. Upon review, we agree the license plate numbers are blurred and not discernable to the viewer. We therefore find that release of the video would not disclose any information

subject to section 552.130 of the Government Code. As you raise no further exceptions to disclosure, the requested video must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust", written over the word "Sincerely,".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 397415

Enc. Submitted documents

c: Requestor
(w/o enclosures)